valid by the law of the place of administration, has been held invalid.[6] But the view now generally prevailing in this country seems to be that such a devise is valid, if immediate and absolute conversion of the property is directed;[7] otherwise not.[8] This seems the more satisfactory result, as it is but another application of the doctrine that the holding of property in a foreign state on remote limitations is not opposed to the law of the domestic state. So a devise of land in Italy to a trustee to sell and invest the proceeds in English land was held valid, even though by the Italian law land could not be held in trust.[9] The result of this case seems questionable in view of the absolute prohibition of all trusts in land by the Italian law, though it may possibly be supported on the theory that a trust obligation, unaffected by Italian law, attaches to the proceeds of the land when sold under the terms of the will. The converse of this, involving the conversion of personalty into realty, is suggested by a recent decision of the New York Court of Appeals. *Mount* v. *Tuttle*, 34 N. Y. L. J. 1375 (N. Y., Ct. App., Jan., 1906). A bequest of personalty on trust to be converted into realty in Utah was held void under the law of Utah for indefiniteness of object, though by the *lex domicilii* of the testator it would have been valid. The result seems right, since land in Utah certainly could not be held on trusts which were illegal in that state.[10]

LIMITATION OF ACTION FOR DEATH BY WRONGFUL ACT. — The stipulation in the statutes giving a right of action for death by wrongful act that action must be brought or notice of claim given within a certain time, is not a mere special statute of limitations affecting the remedy only, but is a substantial condition qualifying the right.[1] As regards the question of when the period begins to run, however, all such stipulations may be included in the general terms "limitations" and "statutes of limitations." The solution of this question is dependent upon the form of the statute involved. Where the statute is so worded as to effect merely a survival of the decedent's tort action for the injury, the limitation must run uninterruptedly from the time of the injury.[2] But the great majority of statutes create an entirely new cause of action.[3] In some instances this new cause of action is given to the widow or children, in which case it seems clear that the limitation must run from the time of the death.[4] But where the personal representative alone is given a right of action, and the statute provides that a certain limitation shall begin to run on the accrual of the cause of action, there is some conflict in the decisions. The New York Court of Appeals recently held, by a divided court, that the limitation begins to run, not at the death of an intestate, but

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[6] Freke *v.* Carbery, L. R. 16 Eq. 461.
[7] Hope *v.* Brewer, *supra*; Ford *v.* Ford, 80 Mich. 42.
[8] Hobson *v.* Hale, 95 N. Y. 588.
[9] *In re* Piercy, [1895] 1 Ch. 83.
[10] White *v.* Howard, 46 N. Y. 144.

[1] Dailey *v.* New York, etc., Ry. Co., 26 N. Y. Misc. 539; Stern *v.* La Compagnie Générale Transatlantique, 110 Fed. Rep. 996.
[2] Sachs *v.* City of Sioux City, 109 Ia. 224; *cf.* Needham *v.* Grand Trunk Ry. Co., 38 Vt. 294, 306.
[3] Pittsburgh, etc., Ry. Co. *v.* Hosea, 152 Ind. 412; see 15 HARV. L. REV. 854.
[4] Western, etc., R. R. Co. *v.* Bass, 104 Ga. 390.

at the appointment of his administrator. *Crapo* v. *The City of Syracuse*, 76 N. E. Rep. 465.

The dissenting opinion rests largely upon the position that it is undesirable and against the policy of all statutes of limitations to leave it in the power of the next of kin to postpone the suit indefinitely by delaying to have an administrator appointed. This argument has added force in that the next of kin, as designated by the statute, are the real beneficiaries of the suit, and it seems equitable that the suit by the administrator, practically a mere trustee, should be barred by the laches of the *cestuis*. This view has generally been adopted by legislatures, for by far the greater number of statutes provide that the suit shall be barred in a certain period after the death.[5] But can this result be reached when the statute provides that the limitation shall run from the accrual of the action? It has been reached, on the ground that the legislature must have intended the same result in both cases.[6] But it is hard to see how the words of the statute can fairly be construed so as to give this result. The cause of action must accrue to the personal representative, since he alone is authorized to sue, and so how can there be any accrual of the cause of action until his appointment? Moreover, though a cause of action may exist in some one who is for the time unable to enforce it, there can be no conception of a cause of action that does not exist as a right of some person.[7] Thus, it seems, the reason that unity of ownership of dominant and servient tenements extinguishes the easement, is that, as no man is able to have a right against himself, so there is no person to whom the right may adhere, and the right cannot exist unattached.[8] This conclusion is supported [8] by the analogy of the case where a trespass is committed against the estate of the deceased, when it is held that the statute of limitations does not begin to run until the appointment of the administrator.[9]

ANTENUPTIAL FRAUDS ON THE MARITAL RIGHTS OF A FUTURE SPOUSE. — The doctrine is now well settled in the United States that equity will aid either spouse to establish his or her marital rights in property voluntarily and secretly conveyed away by the other, before marriage and after betrothal, with an intent to defeat such rights. In England this protection is given only to the husband, but the American doctrine, which vouchsafes equal rights to both spouses, seems not only right upon principle, but more in accord with modern ideas of justice.[1] The Supreme Court of Illinois recently held that equity would give a wife dower and homestead in land voluntarily conveyed by her husband, by a deed not recorded until after marriage, even though at the time of conveyance he had never met the complainant, since the deed was made with a general intent to defeat the

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[5] County *v.* Pacific, etc., Co., 68 N. J. Law 273; George *v.* Chicago, etc., Ry. Co., 51 Wis. 603; Lake Shore, etc., Ry. Co. *v.* Dylinski, 67 Ill. App. 114; Taylor *v.* Cranberry, etc., Co., 94 N. C. 525. Some statutes expressly make the limitation on the new cause of action run from the time of the injury. Rugland *v.* Anderson, 30 Minn. 386.

[6] Carden *v.* L. & N. R. R., 101 Ky. 113.

[7] Sherman *v.* Western Stage Co., 24 Ia. 515.

[8] Andrews *v.* Hartford, etc., R. Co., 34 Conn. 57; Barnes *v.* City of Brooklyn, 22 N. Y. App. Div. 520.

[9] Bucklin *v.* Ford, 5 Barb. (N. Y.) 393.

[1] Chandler *v.* Hollingsworth, 3 Del. Ch. 99.